# In the Supreme Court of the United States

OCTOBER TERM, 1950

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No. 287

SUDAMETAL SOCIEDAD ANONIMA SUD AMERICANA DE METALES Y MINERALES, ALSO KNOWN AS SUDAMETAL, S. A., PETITIONER

*v.*

THE UNITED STATES

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*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS*

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the Court of Claims (R. 15-21) is reported at 90 F. Supp. 551.

### JURISDICTION

The judgment of the Court of Claims, after the granting of a motion for a new trial, was entered on June 5, 1950 (R. 20). The petition for a writ of

certiorari was filed on September 2, 1950. Jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Whether just compensation for the requisition of petitioner's tin stored in a customs warehouse in New York is to be measured by the ceiling price of tin in New York or by the price of tin in Buenos Aires, Argentina, to which petitioner, a citizen of Argentina, intended to ship the tin before it was prevented from doing so by a ban on the export of the tin.

STATUTES AND PROCLAMATION INVOLVED

The pertinent provisions of the requisition statute (Act of October 16, 1941, 55 Stat. 742, as amended (50 U.S.C. App. (1940 ed., Supp. III) 721)) and of the Act of July 2, 1940 (54 Stat. 714) and proclamation issued thereunder (Presidential Proclamation No. 2413, July 2, 1940 (5 F.R. 2467)) forbidding the export of tin, are set forth in the Appendix, *infra,* pp. 11-13.

STATEMENT

On or about November 15, 1941, petitioner corporation, a citizen of Argentina, purchased a quantity of tin in Singapore, at an average price of 56.23 cents a pound, for shipment to Buenos Aires via trans-shipment at New York (R. 6). On account of a marine disaster, the tin did not reach New York until May 4, 1942, where 523 slabs of tin weighing a total of 54,180 pounds were un-

loaded and placed on the dock. At this time, and since July 6, 1940, an export license was required before the tin could be loaded on another vessel and exported to Argentina (R. 5-6; Appendix, *infra*, p. 13). While petitioner was seeking an export license, the tin was placed in a bonded warehouse for storage under customs regulations providing that while the material was so stored the owner could enter it for consumption in the United States, upon paying the appropriate duties, or he could enter it for reexport. However, if the owner took no affirmative action to enter the goods within a year, the tin would be sold and the proceeds applied in payment of duties and storage charges. (R. 7).[1]

Petitioner made two separate applications for an export license to permit the shipment of its tin to Argentina, one on August 18 and the other on August 31, 1942, covering 44,000 out of the 54,180 pounds of its tin in storage. The applications were rejected on September 9, on the ground that the proposed exportation was contrary to the interest of national defense (R. 7, 70A). On or about September 10, 1942, the Navy Department, upon requisition, took possession of the tin at its place of storage, released it from the bonded warehouse and entered it through customs (R. 7). The Navy

[1] The removal of the tin from the dock upon which it had been unloaded and its storage under the above conditions were required by General Order 13292, issued by the United States Customs Service pursuant to Section 490 of the Tariff Act of 1930, as amended, 19 U.S.C. 1490 (R. 6-7).

Department rejected petitioner's claim for compensation based upon the asserted price of tin in Argentina of $1.83 a pound (R. 8), and instead allowed petitioner a preliminary award at the rate of 52¢ a pound, which it found to be the market value of the tin within the ceiling price (R. 9). This was the price at which the Metal Reserves Board would sell tin to any holder of an allocation or priority order therefor (R. 17).

Petitioner brought suit on April 11, 1944, in the Court of Claims for $97,983.44, which it claimed was the fair value of the tin, less import duties, taxes and costs of delivery (R. 1-4), at the nearest free market in Buenos Aires, Argentina, at the time of the requisition and at the time of the probable delivery of the tin in Buenos Aires.

The Court of Claims held that petitioner was prevented from shipping the tin to Argentina by lawful regulations of the United States, banning export, of which it could not complain (R. 16). Its claim was, therefore, only for just compensation for the requisition of tin in New York, and the measure of compensation was the price of tin prevailing at the time and place of the taking. The Court of Claims at first rejected the ceiling price, and instead granted a price of 54.79 cents a pound which the Metal Reserves Board had paid for tin purchased in the Belgian Congo (R. 18). After the decision of this Court in *United States* v. *Commodities Trading Corp.*, 339 U.S. 121, the Court of Claims granted a motion for a new trial, and

limited petitioner to the ceiling price for export tin at the time and place of the taking, or 53¢ a pound (R. 20).

ARGUMENT

The court below was plainly right in measuring just compensation for petitioner's property at the prevailing market prices in existence at the time and place of the taking. *United States* v. *New River Collieries Co.*, 262 U.S. 341. To avoid this well established rule, petitioner argues that, because the tin came into a port of the United States on an "intransit" order and belonged to a friendly alien, the tin was not, for purposes of determining its value, legally in New York, despite its physical location there, and that the claim must be judged by international law, which petitioner asserts measures the value of the property taken in these circumstances by the price at the place of its intended destination. Neither of these contentions has any merit.

By petitioner's voluntary action, the tin was in the United States in a bonded warehouse from which it could be taken by the owner to be sold in the United States or exported or seized by the customs authority after a year if the owner failed to enter it for consumption or exportation. It is idle to assert that, in these circumstances, the tin was any more beyond the sovereign power of the United States to requisition than any other quantity of tin in the United States. The cases cited by petitioner, dealing with the situs of personal

property for various purposes, are irrelevant (Pet. 19-26). Petitioner's argument reduces itself to the absurdity that the property physically in New York and subject to sale there must be valued as if it were for sale in Buenos Aires. Cf. *Burnet* v. *Brooks,* 288 U.S. 378, 391.

Petitioner's next contention, that its claim must be judged by international law also fails in every respect. Assuming for the moment that petitioner's claim is to be judged by rules of international law, petitioner must meet at the outset the principle that alien property in the United States may be requisitioned provided that no greater burden is imposed upon aliens than upon nationals. Borchard, *Diplomatic Protection of Citizens Abroad* (1915), p. 113; II Whiteman, *Damages in International Law,* p. 900; Wormser, *Collection of International War Damage Claims,* p. 147. The court below, in granting petitioner compensation based upon the price of tin in New York at the time of the taking, treated petitioner's claim exactly as if it were the claim of an American citizen (R. 17). Moreover, in the event of requisition, the damages awarded by international tribunals are often measured by the value of the property at the time and place of the taking. Whiteman, *op. cit., supra,* at pp. 902-920. And international law does not appear to set aside government fixed prices; on the contrary, where prices are set by a government for requisitioned property, those prices are frequently adopted by international claim tribunals

as the measure of damages. Whiteman, *op. cit., supra,* at p. 905. The award below therefore appears to meet the tests of just compensation under international law.

But international law has nothing to do with this case. Petitioner is not presenting its claim to an international claims tribunal or through diplomatic negotiations; it is instead suing in the Court of Claims on the reciprocal right, granted to citizens of Argentina, to sue the United States in the Court of Claims on the same grounds as a citizen of the United States, 28 U.S.C. 2502 (R. 5). Its claim must be founded upon the Constitution and laws of the United States (28 U.S.C. 1491), and petitioner's complaint expressly seeks just compensation under the requisition statutes of the United States (R. 1). Indeed, by this suit, petitioner makes the fact of its alienage wholly irrelevant; its case is to be judged as that of an owner of property for just compensation, for a public taking, regardless of the nationality of the owner. *Russian Volunteer Fleet* v. *United States,* 282 U.S. 481, 491.

On this basis, entirely favorable to it as a matter of principle, petitioner has no claim for damages against the United States because of the denial of the export license. *Horowitz* v. *United States,* 267 U.S. 458; *Neumaticos Goodyear S. A.* v. *United States,* 109 C.Cls. 535, certiorari denied, 334 U.S. 838. Its claim for compensation rests upon the requisition of the tin, and is measured by the pre-

vailing prices at the time and place of the requisition where, as here, there is a market price prevailing at the time and place of the taking. *United States* v. *New River Collieries, supra; United States* v. *Toronto, Hamilton & Buffalo Navigation Co.*, 338 U.S. 396, 404.

The case of *Commercial and Estates Co. of Egypt* v. *Ball*, 36 L.T.R. 526, approved in *Commercial and Estates Co. of Egypt* v. *Board of Trade*, 1 K.B. (1925) 271, and the *Neptune* award, II Whiteman, *op. cit., supra*, p. 1214, upon which petitioner places chief reliance (Pet. 15-16) are not in point, for they involve a taking wholly different from the taking here. In *Commercial and Estates of Egypt Ltd.*, the property, when taken, was cargo on a vessel seized in a neutral port, and brought into a British port against the will of the owners. The holding in the case is that property in a foreign port under British military control may not be requisitioned under the domestic requisitioning statute and compensation for its taking is not limited by the restrictions of the requisitioning statute.[2] One

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[2] Furthermore, the case does not decide the precise measure of damages. In the first decision, the court dismissed the suit against the requisitioning officer on the ground that the petitioner's claim was not under the requisitioning statute, but was a claim for just compensation because of the seizure of property under the right of "angary", a principle of international law. 36 L.T.R. at 527. Petitioner accordingly brought a second suit which, however, was dismissed by the war compensation claims court; the Kings Bench reinstated the suit, upholding the correctness of the first decision but left the question of damages to the lower court. 1 K.B. (1925) at 284, 297. As to damages, the decision only holds that the claimant

English judge suggested that the requisitioning statute would apply to property brought even temporarily into the country by neutrals voluntarily seeking its protection. Atkins, L. J., 1 K.B. (1925) at 293. In the case at bar, the property was within the United States by petitioner's voluntary action. Moreover, petitioner does not contend that its property was exempt from requisition; on the contrary, as noted above, its claim is expressly founded on the provision for just compensation in the requisition statute. (See Appendix, *infra*, pp. 11-12).

In the *Neptune* award, the property was taken while cargo on a vessel captured on the high seas. Obviously, there was no market price at the time and place of the taking. Cf. *United States* v. *Toronto, Hamilton & Buffalo Navigation Co., supra.*

Petitioner's contention that there was no market price at New York because the maximum price of tin was fixed by governmental regulations is fully answered by *United States* v. *Commodities Trading Corp., supra.* At most, petitioner was entitled to the export price of tin, *United States* v. *New*

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would not be limited to the fixed prices for requisitioned goods, which by statute were fixed without regard to the market price of the goods at the time and place of the taking. See Regulation 2B of the Defense of the Realm Regulations, 1 K.B. (1925) at 298-299. It was left to the war compensation claims court to make "a just assessment of compensation" taking into account all the circumstances of the taking, including the state of war. *Idem.* at 300.

*River Collieries, supra,* and the price, which petitioner has been awarded, included an export premium of 1¢ a pound over the domestic price (R. 17).

## CONCLUSION

There is no conflict of decisions and the case does not warrant further review. It is respectfully submitted therefore that the petition for a writ of certiorari be denied.

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OCTOBER 1950.

APPENDIX

1. Act of October 16, 1941, 55 Stat. 742, as amended (50 U.S.C. App. (1940 ed., Supp. IV) 721) provided as follows:

> * * * whenever the President, during the national emergency declared by the President on May 27, 1941, but not later than June 30, 1945, determines that (1) the use of any military or naval equipment, supplies, or munitions, or component parts thereof, or machinery, tools, or materials necessary for the manufacture, servicing, or operation of such equipment, supplies, or munitions is needed for the defense of the United States; (2) such need is immediate and impending and such as will not admit of delay or resort to any other source of supply; and (3) all other means of obtaining the use of such property for the defense of the United States upon fair and reasonable terms have been exhausted, he is authorized to requisition such property for the defense of the United States upon the payment of fair and just compensation for such property to be determined as hereinafter provided, and to dispose of such property in such manner as he may determine is necessary for the defense of the United States. The President shall determine the amount of the fair and just compensation to be paid for any property requisitioned and taken over pursuant to this Act and the fair value of any property returned under section 2 of this Act, but each such determination shall be made as of the time it is requisitioned or returned, as

the case may be, in accordance with the provision for just compensation in the fifth amendment to the Constitution of the United States. If, upon any such requisition of property, the person entitled to receive the amount so determined by the President as the fair and just compensation for the property is unwilling to accept the same as full and complete compensation for such property he shall be paid 50 per centum of such amount and shall be entitled to sue the United States in the Court of Claims or in any district court of the United States in the manner provided by sections 24 (20) and 145 of the Judicial Code (U.S.C., 1934 ed., title 28, secs. 41 (20) and 250) for an additional amount which, when added to the amount so paid to him, he considers to be fair and just compensation for such property. Such courts shall also have power to determine in an appropriate proceeding any questions that may arise with respect to the amount of the fair value to be paid upon the return of any property under section 2 of this Act, regardless of the amount in controversy in any such proceeding.

2. Section 6 of the Act of July 2, 1940, 54 Stat. 714, reads as follows:

Sec. 6. Whenever the President determines that it is necessary in the interest of national defense to prohibit or curtail the exportation of any military equipment or munitions, or component parts thereof, or machinery, tools, or material, or supplies necessary for the manufacture, servicing, or operation thereof,

he may by proclamation prohibit or curtail such exportation, except under such rules and regulations as he shall prescribe. Any such proclamation shall describe the articles or materials included in the prohibition or curtailment contained therein. In case of the violation of any provision of any proclamation, or of any rule or regulation, issued hereunder, such violator or violators, upon conviction, shall be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both such fine and imprisonment. The authority granted in this section shall terminate June 30, 1942, unless the Congress shall otherwise provide.

3. The relevant provisions of Presidential Proclamation No. 2413, July 2, 1940 (5 F.R. 2467) are as follows:

> * * * I have determined that it is necessary in the interest of the national defense that on and after July 5, 1940, the articles and materials hereinafter listed shall not be exported from the United States except when authorized in each case by a license * * *.
>
> 2. v. Tin.

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